

**Washington State Human Rights Commission
Minutes of March 31, 2006
Tacoma, WA**

ATTENDANCE

Commissioners: Kathy Baros Friedt, Commission Chair; Ellis Casson; Dallas Barnes; Deborah Sioux Cano-Lee; and Jerry Hebert.

Staff: Marc Brenman, Executive Director; Idolina Reta; Deputy Director; Tanya Calahan, Executive Assistant to the Commissioners; Dixie Shaw, Operations Manager; Seth Kirby, Intern; and Traci Friedl, Assistant Attorney General.

Guests: Mayor Mark Foutch, City of Olympia; Angela Dawson-Milton, Seattle Office of Civil Rights; Roxanne Vierra, King County Office of Civil Rights; Charles Leech; Sherrie Adams, and Goodwin Trent, City of Tacoma Human Rights and Human Services Department; and Ted Saunders.

(Audio tape one –side one)

OPENING AND WELCOME

Commissioner Baros Friedt called the meeting to order at 9:10 a.m

APPROVAL OF MINUTES

Commissioner Hebert made a motion to approve the minutes of the February 23-24, 2006 Commission meeting. Commissioner Cano-Lee seconded the motion. MOTION CARRIED.

ACTION ITEMS

Operations Manager Dixie Shaw followed up with Earl Ford of the Vancouver Branch of the NAACP regarding complaints. She also followed up with Mr. and Mrs. Salazar. The Salazars indicated at the February 2006 public forum in Vancouver that staff had not provided good service when they tried to file a complaint. However, as further research showed, staff provided better service than the Salazars indicated.

Tanya Calahan reviewed the action items from the February 23-24, 2006 Commission meeting.

CASE CLOSURES

Marc Brenman requested that the Commissioners set aside approval of the no reasonable cause finding in the Guadalupe-Quesada v. Small Tribes Organization of Washington case so staff can conduct additional research.

The Commissioners discussed cases on the agenda for approval.

Commissioner Cano-Lee asked whether staff reported alleged break and lunch violations to the WA State Department of Labor and Industries in the Hooper v. SW Washington Medical Center case. The finding was no reasonable cause. Dixie Shaw commented that investigators make referrals where appropriate. She will check to see if one was made in this case.

Commissioner Barnes asked about the Woldetsadik v. University of Washington case and whether or not the investigator conducted an onsite interview. He then spoke about the importance of conducting face to face interviews. Marc Brenman will discuss the appropriateness in-person interviews with managers.

Commissioner Hebert made a motion to approve case closures with the exception of Guadalupe-Quesada v. Small Tribes Organization of Washington. The Commissioners unanimously approved the case closures.

Commissioner Hebert made a separate motion to approve the Woldetsadik v. University of Washington no reasonable cause finding. Commissioner Cano-Lee seconded the motion. Commissioner Barnes was opposed. MOTION CARRIED.

CHAIRPERSON'S REPORT

Commissioner Baros Friedt highlighted several items in her monthly chairperson's report.

She spoke about the Diversity Awards sponsored by the Association of Washington Cities (AWC). AWC asked her to be a judge. She shared that she will obtain information from the Association of Washington City's (AWC) regarding diversity contacts for use in future WSHRC meetings. Commissioner Hebert requested to view the binder of nominees for the diversity awards when its available.

There is an upcoming conference sponsored by the US Department of Housing and Urban Development (HUD) in Anaheim, CA. Commissioner Baros Friedt can't attend. HUD requested that one Commissioner, an Assistant Attorney General, and the Housing

Manager attend. She asked that the Commissioners let staff know by the April 2006 meeting if one of them can attend the conference.

There was discussion about Unity in the Community efforts, which organized in Olympia against the attempt by Nazis to spread their message in the Olympia area. Many efforts are being planned and implemented, including showing the movie "Not in Our Town," about how Billings, Montana, in 1995 organized against hate groups. Commissioner Hebert made a motion to approve funds in the amount of \$150 to \$300 to support Unity in the Community efforts. Commissioner Casson seconded the motion. MOTION CARRIED.

BUDGET AND CASE PRODUCTION REPORTS

Marc Brenman provided several charts and graphs to the Commissioners that details case production and agency revenue.

Staff will provide the Commissioners a report that shows aging cases as requested.

There was discussion about whistleblower complaints investigated by the Washington State Auditor (SAO) and whistleblower retaliation complaints investigated by WSHRC under the Washington Law Against Discrimination. Marc Brenman will provide clarification to the Commissioners about whistleblower jurisdiction of the SAO and WSHRC.

Commissioner Hebert congratulated staff for an outstanding month of case production.

ACCOMMODATIONS FOR HARD OF HEARING INDIVIDUALS

Ted Saunders spoke to the Commissioners about difficulties faced by individuals that are hard of hearing in places of employment.

He provided a handout to the Commissioners and explained why an FM radio device helps him. He talked about his disability and the challenges that he personally faced with receiving disability accommodations. He described his experience in high school and college and related challenges and communication barriers in the workplace because of his significant hearing loss.

Marc Brenman explained reasonable accommodation and interactive process. The accommodation does not have to be the one requested. Also, employers can't make an assumption that a person has a cognitive disability because they are deaf.

(Audio tape one side two)

LEGISLATION TO EXPAND JURISDICTION DISCUSSION

Commissioners, staff, and guests introduced themselves. Mayor Mark Foutch, Charles Leech, Roxanna Vierra, Seth Kirby, Angela Dawson-Milton, Goodwin Trent, and Sherrie Adams joined the Commissioners for a discussion about best practices for investigating complaints based on sexual orientation. The Washington State Legislature recently expanded WSHRC's jurisdiction to include sexual orientation discrimination protections.

Mayor of the City of Olympia Mark Foutch spoke first. He described the City of Olympia's experiences with sexual orientation ordinances. There is a domestic partner registry. He talked about sexual minority discrimination protections in Thurston County. Employees of the City of Olympia with domestic partners have benefits whether gay or not. Mayor Foutch exited the meeting early because of other commitments so he was not present for the entire expanding jurisdiction discussion.

Charles Leech spoke next. He shared information about the City of Tacoma's experiences in this area. He pointed out that Tacoma does not have enough staff or enough allocated funds in its budget to conduct effective education and outreach efforts to the gay and lesbian communities. As a result, the necessary outreach and education didn't happen when the ordinance in Tacoma passed. He stated that if he could do it over again, he would have found the money to conduct the necessary education and outreach. There was a resulting assumption of awareness, which in reality, was greatly lacking.

He shared anecdotal and actual case examples. A City of Tacoma attorney filed the first case under the new ordinance. That case received a lot of media attention.

He spoke specifically about YMCA cases that ended in settlements. The respondents weren't educated in the new sexual orientation ordinance. The central issue in the complaints was the lack of recognition of the complainants as a "real family" because of their sexual orientation.

He highlighted the Stosalovich case, where an exceptional employee was treated dramatically different after the supervisor found out that she was lesbian.

Investigator Goodwin Trent explained how he investigated that particular complaint and how he addressed the unique issues in sexual orientation complaints. It took longer than others to investigate, about 14 months.

He explained how to address the number of employee jurisdictional issues by counting volunteers and working board members who do essential work for an agency; although permanent full time employees may be only four or seven.

Commissioner Barnes commented about how impressed he was with the investigation because they got to more than an "on the surface" investigation.

Angela Dawson-Milton spoke about the City of Seattle's ordinance. She stated how important outreach and education is. She provided information about cases; such as one filed by a straight man who alleges that straight men over 25 were being replaced by young gay men in a restaurant. The City of Seattle issued a cause determination in this case.

She explained how a "perception" exists that straight people aren't protected by the City's ordinance just like some males think that gender discrimination protections don't apply to them. Educating the general public is important also; not just in the Gay, Lesbian, Bi-sexual, and Trans-gendered communities.

She spoke about comparator evidence and recommended using common sense. Also, there is no significant difference in case processing time at the City of Seattle. They routinely ask for personnel files or tenant files for housing cases. It's important to look at what is or isn't in the case file. The lack of information can be telling.

Roxanne Vierra from King County Office of Civil Rights was the next speaker. The four covered ordinances are in unincorporated King County. King County has an official sexual orientation definition. Gender identity is also defined.

She spoke about cases filed. There was a cross dressing case filed in 1998. It involved a man that chose to wear women's clothes. They found cause but lost on appeal to Superior Court because a key witness recanted their story.

There was a housing case filed on AIDS discrimination, where the complainant wasn't allowed to use a swimming pool.

(Audio tape two – side one)

King County approaches sexual orientation cases like other cases. Ms. Vierra described a case involving a straight actor; who played in a "Victor/Victoria" type acting role. His apartment management and tenants treated him differently when they saw him "in costume." That case settled with some education provided to the respondents.

She gave another example of a person transitioning from male to female that was employed at a hair salon. That individual faced difficulties when the respondent decided to transfer them to a salon in another city. On a positive note; the new location was within an area covered by a sexual orientation discrimination ordinance.

Intern Seth Kirby provided information on how other states enforce sexual orientation discrimination laws. Mr. Kirby is interning at WSHRC until early June. He currently works 10 hours per week for WSHRC.

He shared that San Francisco and New York City have "best practices" policies for gender identity issues such as providing gender neutral single stall restrooms and

providing fitting rooms at stores that are “family rooms.” Wisconsin implemented their law in 1982 so they have many years of experience.

RECONSIDERATIONS

Civil Rights Specialist Bruce Redding provided summaries for the reconsiderations cases on the agenda.

Blake Warner v. Multi Service Center. The complainant appeared in person with the aid of American Sign Language Interpreter Sarah Rasmussen. The respondent did not participate. Complainant explained the difficulties he and his wife experienced trying to complete the application for respondent’s services. He alleged that respondent refused to provide an interpreter so he could better explain his circumstances in person.

Commissioner Casson initially made a motion to grant reconsideration to interview complainant’s witness and provide an interpreter to complainant. After further discussion, Commissioner Hebert amended the motion to grant reconsideration to determine what the state law says about a deaf person asking for an interpreter and the obligations of respondent to provide one; determine whether in fact respondent denied complainant an in person interpreter and an in-person interview; determine whether or not respondent granted in-person interviews to non deaf persons; and interview complainant’s advocate regarding the situation. Commissioner Casson seconded the motion. MOTION CARRIED.

Robin Miller v. United Airlines. Complainant appeared in person. Respondent did not participate. She spoke about the additional documentation that she provided that would better explain what happened in her case. Commissioner Hebert made a motion to grant complainant’s petition for reconsideration. Commissioner Cano-Lee seconded the motion. MOTION CARRIED.

Sun v. Microsoft. Mr. Sun was present. Melissa Lamfalusi is the Attorney for Respondent. She participated by telephone.

The Commissioners asked specifically about the investigators alleged failure to interview complainant’s witnesses. How can staff make a determination about witness testimony when they did not interview the witnesses? Deputy Director Idolina Reta commented that the issues in complainant’s complaint did not involve what witnesses would say but rather what respondent’s policies were. Witness testimony is therefore unnecessary. Complainant was on an indefinite medical leave of absence.

Ms. Lamfaslusi commented on behalf of Respondent. Respondent held complainant’s position open for one year. Complainant failed to provide information as to whether he could return to work. He was never cleared to return to work by his physician.

(Audio tape two – side two)

Complainant brought up other issues. WSHRC lacks jurisdiction over immigration issues and visa status complaints are not civil rights cases.

Commissioner Hebert made a motion to deny complainant's petition for reconsideration. Commissioner Barnes seconded the motion. Complainant was never cleared to return to work by his physician. Therefore, respondent did not fail to act appropriately in this case. Commissioners Cano-Lee and Casson were opposed. MOTION CARRIED.

Alanna Gonzalez v. Fred Meyer Inc. Complainant appeared in person. Respondent did not participate. There was discussion about whether complainant had a qualifying disability because her doctor stated that her asthma was controlled by medication. It appears that the issues in complainant's case were eventually addressed by the respondent. However, complainant indicated that she didn't want what happened to her to happen to anyone else. Commissioner Hebert made a motion to deny complainant's petition for reconsideration. Commissioner Casson seconded the motion. Commissioner Cano-Lee abstained. MOTION CARRIED.

After reviewing the materials, Commissioner Hebert made a motion to approve the remaining staff recommendations to deny for the following petitions for reconsideration: **Cole v. Swift Trucking; Countach v. ACSS Security; Ference v. King County Housing Authority; and Young v. James Ferrell & Company.** Commissioner Casson seconded the motion. Commissioner Barnes abstained. MOTION CARRIED.

EXECUTIVE DIRECTORS REPORT

Marc Brenman highlighted his monthly Executive Director's Report.

Commissioner Baros Friedt asked about timeliness issues on page three for case closures. Special meetings can be held to approve case closures in at the end of June and September, which are the months when there are case contract deadlines with the EEOC and HUD.

Marc Brenman clarified that the case against the Girl Scouts of America has not settled.

Mr. Brenman commented about the new just cause discipline standard. He explained how the process works. The process is still progressive but documentation for discipline is essential.

UNFINISHED BUSINESS

The Commissioners discussed Thursday night public forums. Commissioner Casson requested details regarding the costs for conducting public forums and Commission meetings.

Commissioner Barnes will have a conversation with Sharon Ortiz about migrant issues to address in Eastern Washington during the June 29, 2006 meeting in Tri Cities. A needs assessment like the one conducted in Vancouver is a possibility.

The April 27, 2006 forum will be about "On the Border Militia," immigration issues, and the anti minutemen watch. Commissioner Hebert has contact information for the group that is co-sponsoring the forum. They are arranging a meeting room for the forum also.

COMMISSIONER ACTIVITIES

Commissioner Hebert attended the Bainbridge Japanese Internment dedication ceremony with Marc Brenman. He presented the plaques for the internment resolution.

Commissioner Baros Friedt met with Ms. Santiago of Safeplace recently.

EXECUTIVE DIRECTOR EVALUATION PROTOCOL

Commissioner Baros Friedt spoke about the March 17, 2006 work study session. The Commissioners present discussed the Evaluation Protocol document for the Executive Director and the timeline for conducting the evaluation.

(Audio tape three – side two)

Commissioner Hebert asked to see the individual input from all commissioners in addition to seeing the consolidated information. However, Commissioner Casson expressed concern about sharing his individual comments with all Commissioners.

There was a question about whether the written Executive Director evaluation is a public document. Traci Friedl will research the issue. Ms. Friedl was able to conduct online research using a wireless internet connection during the meeting.

Her research showed that under the Public Records Act, RCW 42.17, except to the extent that they discuss specific incidents of misconduct, disclosure of an employee's performance evaluations would be highly offensive to a reasonable person. Disclosure would impair employee morale if employees thought that their evaluations would be made public to anyone who requested them and because supervisors would be reluctant to write candid evaluations of their subordinates. So, under normal circumstances, they are exempt from public disclosure.

The Commissioners discussed extensively whether the Executive Director's evaluation should be housed at the agency or if the chairperson should keep it in his or her custody. The evaluation will be kept in a confidential personnel file, in the custody of the human resources staff person.

The majority of Commissioners agreed to share individual Commissioner input about the executive director's performance with all Commissioners. Commissioner Casson was opposed.

The Commissioners next considered whether or not Commissioners should solicit individual input from employees about the Executive Director evaluation. The majority of Commissioners opposed, Commissioner Casson was in favor of that proposal.

After discussion, they agreed to delete the external assessment language in the protocol and to remove the language under the internal assessment section about the protocol for internal solicitation.

Commissioner Hebert made a motion to approve executive director evaluation protocol and timeline with discussed changes. Commissioner Cano-Lee seconded the motion. MOTION CARRIED.

The April 14, 2006 work study session is cancelled.

ACTION ITEM REVIEW

Tanya Calahan reviewed the meeting's action items, which are attached to these minutes.

ADJOURN

There being no further business, the meeting adjourned at 5:12 p.m.

Respectfully submitted,

Tanya Y. Calahan
Executive Assistant to the Commissioners